

CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

LUIS ALBERTO CAJINA,

Defendant and Appellant.

A105479

**(Contra Costa County
Super. Ct. No. S0318287)**

Luis Alberto Cajina appeals his conviction by jury trial of failure to complete his annual registration as a sex offender and failure to register within five days of changing his address. (Pen. Code, § 290, subd. (a)(1)(A) & (D).¹) The key issue in the case was not whether he failed to register, but whether that failure was willful pursuant to section 290, subdivision (g)(2). On this issue, he asserts instructional error.

Prior to trial, appellant sought to exclude evidence of the nature of the prior conviction giving rise to his duty to register as a sex offender by offering to stipulate that he had suffered a conviction that subjected him to the registration requirements. He argued his status as a sex offender thereby became irrelevant. The trial court rejected his offer. In the unpublished portion of our opinion, we address the claim of instruction error; in the published portion, we reject his claim of evidentiary error.

BACKGROUND

Appellant moved to Daly City in March 1991 after he served a prison sentence for

* Pursuant to California Rules of Court, rules 976(b) and 976.1, the Background, and parts I and II of this opinion are not certified for publication.

¹ All further section references are to the Penal Code.

conviction of a sexual offense that requires the defendant to register as a sex offender with the police chief or sheriff in the city or county in which he resides after his release from prison. (§ 290.) It is undisputed that appellant properly registered with the Daly City Police Department in 1991. Then, as now, the law enforcement agency at which a sex offender registers has been required to forward to the state Department of Justice the registrant's registration documents (signed information statement, fingerprints, photograph) and any subsequent change of address information given to the agency by the registrant within three days of receiving this material. (§ 290, subds. (e)(3), (f)(1).)

Appellant was discharged from parole in the summer of 1994.

Effective January 1, 1995, and January 1, 1997, section 290 was amended to add more stringent registration requirements. As amended, section 290 now requires a convicted sex offender to register "for the rest of [his] life while residing in California" (§ 290, subd. (a)(1)(A)); to register with the police chief or sheriff of the city or county in which he resides within five days of coming into that city or county (§ 290, subd. (a)(1)(A)); to re-register annually with that police chief or sheriff within five days of his birthday (§ 290, subd. (a)(1)(D)); and to inform the law enforcement agency at which he last registered of any change of address within five days of the change (§ 290, subd. (f)(1)). The registering law enforcement agency is also required to notify the sex offender of the statutory changes when the offender next registers. (§ 290, subd. (I)(1).)

On April 21, 1997, Daly City Police Detective Gary Smith, pursuant to the statutory requirement to inform all registered sex offenders of the registration changes, contacted appellant at his house to inform him of the new requirement of annual registration within a certain number of days of the registrant's birthday. The same day appellant accompanied Detective Smith to the police station, where he filled out a new registration form (familiarily referred to as a DOJ 8102 form), was fingerprinted, and received a temporary registration receipt. The Daly City Police Department uses the DOJ 8102 form to record all registration events in Daly City, e.g., annual registrations, moves into or out of the city.

The DOJ 8102 form states, in pertinent part:

“I have been notified of my duty to register as a convicted sex offender under Penal Code section 290 . . . and I have read, understand and initialled each requirement listed below.

“My responsibility to register is a lifetime requirement. Upon coming into any city, county, or city and county in which I am domiciled I must register with the law enforcement agency having jurisdiction over my residence, as [a] . . . sex offender within five days.

“When changing my residence I must inform the registering agency whose jurisdiction I’m leaving . . . as a sex offender within five working days.

“[I]Within five working days of my birth date every year I must update my address, name, [and] personal and vehicle information with the registering agency.”

The bottom of the DOJ 8102 form contains a place for the registrant’s signature and the date of the signature.

Detective Smith’s practice in 1997 was to read and explain to the registrant each separate requirement on the form and ask if the registrant understood the requirement. Smith would sometimes explain the requirements in “easier terms,” e.g., saying “where you live” rather than “domicile.” If the registrant answered affirmatively, Smith had him initial each requirement. Smith does not speak Spanish, but the department had Spanish speakers to assist him if necessary. As part of the registration process, the registrant’s photograph and fingerprints were taken and a registration card was completed. Smith then released the registrant, saying, “I will see you next year.” The DOJ 8102 form information was then forwarded to the Department of Justice and entered into its computer.

During appellant’s April 21, 1997 visit to the Daly City Police Department, appellant initialed each registration requirement listed on the DOJ 8102 form and dated and signed the form in Smith’s presence. Appellant’s birthday is October 2. Once appellant had completed the registration process, Smith, given this birthdate, probably would not have said to him “. . . [S]ee you next year,” but would have reminded him to

come in on his October birthday. Smith did not remember appellant having any language difficulties during the visit.

In 1997, the practice of the Daly City Police Department was to issue a registrant who made any changes to his registration a temporary registration receipt at the conclusion of the registration process and subsequently mail the registrant a permanent receipt. The temporary and permanent receipts contained the same information, including the following admonitions: “290 PC offender shall register within five working days of coming into any city, county, or city and county in which they are domiciled with the law enforcement agency having jurisdiction over his or her place of residence. In addition the offender is required to update information annually within five working days of his or her birth date. [¶] Any person who is required to register shall upon changing his or her residence inform the law enforcement agency with which he or she has registered within five working days.”

On September 29, 1997, three days before his birthday, appellant re-registered under the supervision of Detective Mark Keyes. Detective Keyes’s practice was to have the registrant read all requirements on the DOJ 8102 form, ask if the registrant understood them, answer any of the registrant’s questions, have the registrant initial each requirement to indicate he understood the requirement, again explain the requirement of annual registration regardless of where the registrant lived in California, and have the registrant sign the form in his presence. Keyes’s practice was also to note on the form if the registrant needed foreign language assistance.

Appellant’s DOJ 8102 form dated September 29, 1997, contains no notation that he needed language assistance. The box on DOJ 8102 form entitled “annual update” was checked. It is undisputed that September 29, 1997, was appellant’s last registration anywhere in California.

Detective Keyes further testified that if a sex offender appeared at the front desk of the Daly City Police Department between 1997 and 2001 and sought to update information on his registration, the department protocol was to direct him to a detective, all of whom are trained in registration procedures. A “regular patrol officer” was not

permitted to conduct registration updates or give assistance regarding registration obligations. If one of the department's 10 detectives was unavailable to conduct an update, the "beat" officer would direct the registrant to return "in a short period of time," and in the meantime contact a detective by pager.

In June 1998, appellant moved from Daly City to Pittsburg, Contra Costa County. According to Detective Smith, when a registrant came to the Daly City Police Department to inform it that he was moving out of Daly City, the department would fill out a DOJ 8102 form, check the box entitled "moving out of jurisdiction," and notify the city to which the registrant was moving.

In March 2000, Daly City Detective Greg Oglesby investigated appellant's registration file and determined he had not registered since September 1997. Detective Oglesby went to the Daly City address on appellant's 1997 registration documents and learned appellant no longer lived there.

In May 2003, the Department of Justice's Sexual Predator Apprehension Team learned that a Department of Motor Vehicles document showed a Pittsburg residence address for appellant's vehicle, which differed from the residence address on his sex offender registration. This discovery prompted the Department to investigate appellant's possible failure to comply with the registration requirements.

Defense

Appellant testified on his own behalf. Since his March 1991 release from prison, he had registered annually from 1991 to 1996 in late September with the Daly City Police on the instruction of his parole officer, Ricardo Rodriguez.²

In April 1997, appellant went to the police department at Detective Smith's request. He was shown a form filled out in part by Detective Smith and in part by another officer. They instructed him to initial the places on the form they had marked

² Whether appellant registered every September between his initial registration in 1991 and his April 1997 registration was disputed. The Daly City Police Department files contained no record of an annual registration during those years, and the parties stipulated that the State Department of Justice had no record of appellant registering annually on his October 2 birthday between 1991 and 1996.

with an “x”. He initialed the designated places, but he did not remember if he or an officer read the statements that preceded his initials. The officers told him to register annually, to inform them if he changed his address, and to return to the station before or no later than his birthday. They did not tell him that registration was a lifetime requirement. He was given a receipt to carry in his pocket, but he never read the information on the back of the receipt.

Appellant returned to the police station in September 1997 because his October birthday was approaching. He informed the officer at the front desk that he wanted to renew his sex offender registration and presented his registration card. He was taken downstairs, where an officer tore up his old registration card and wrote up a new one. Appellant signed and placed a fingerprint on it, and the officer said “. . . [S]ee you next year.”

In June 1998, appellant bought a house in Pittsburg and went to various agencies, e.g., Department of Motor Vehicles, post office, to inform them of his change of address. He included the Daly City Police Department because Parole Officer Rodriguez had instructed him to notify the police of any change of address, telephone number, or job.

At the police department, appellant told the uniformed officer at the front desk that he was a sex offender, showed her his registration card, and gave her a card with his new and old addresses. Unlike previous occasions when he went to the department to re-register and the front desk officer called “somebody” who took him “downstairs” for the registration process, this officer “just took” the change of address card and returned his registration card to him. She asked if he was on parole or had a probation officer; he replied “no.” She told him “everything was okay,” he did not need to register any more, to go home, and “if they needed me for something” they would advise him by mail. Their exchange lasted no more than 10 minutes. Based on this officer’s statements, appellant did not register with the Pittsburg Police Department because he never received any paperwork in the mail.

At trial, appellant could describe the Daly City front desk officer with whom he spoke in June 1998, but he could not remember her name. He could not precisely

describe the other officers with whom he dealt in his 1991-1997 registration proceedings because there was a different officer on every occasion and it was a long time ago.

The jury found appellant guilty of failure to complete the annual registration for sex offenders within five days of his birthday (§ 290, subd. (a)(1)(D)) and of failure to register within five days of his change of address (§ 290, subd. (a)(1)(A)). In a bifurcated proceeding the court found true the allegation that he had previously been convicted of a serious felony.

DISCUSSION

I. Instructions re: Actual Knowledge of Registration Obligations

Appellant contends his right to due process was violated by jury instructions that improperly allowed the jury to convict him even if he did not willfully fail to register.

The jury was instructed with the following special instructions regarding appellant's two failure-to-register offenses:

"Defendant is accused in Count 1 of having committed the crime of failing to register annually within 5 working days of his birth date. . . .

"Every defendant, who, having previously been convicted of an offense listed in Penal Code section 290(a)(2), willfully fails to register annually with the chief of police of the city in which he or she resides within five working days of his or her birthday, beginning on his first birthday following registration of change of address, is guilty of the crime of failing to complete annual registration as a sex offender. . . .

"In order to prove the defendant guilty of this crime, each of the following elements must be shown:

"1. The defendant was required to register as a sex offender under Penal Code section 290 because he has previously been convicted of a qualifying offense listed in Penal Code section 290(a)(2);

"2. Following registration of change of address, the defendant failed to, annually, within five working days of his birthday, update his registration with the chief of police in the city in which he resided.

"3. The defendant had actual knowledge of his duty to register; and

“4. Having that knowledge, beginning on his first birthday following registration or change of address, the defendant willfully failed to update his annual registration as a sex offender . . . with the chief of the police of that city within five working days of his birthday.

“Defendant is accused in Count 2 of having committed the crime of failing to register within 5 working days of change of address. . . .

“Every defendant, who, having previously been convicted of an offense listed in Penal Code section 290(a)(2), willfully fails to register with the chief of police within five working days of coming into, or moving within, a city and establishing a new temporary or permanent residence . . . is guilty of the crime of failing to register as a sex offender within five days of change of address and location. . . .

“In order to prove the defendant guilty of this crime, each of the following elements must be shown:

“1. The defendant was required to register as a sex offender under Penal Code section 290 because he has previously been convicted of a qualifying offense listed in Penal Code section 290(a)(2);

“2. The defendant came into, or moved within, a city in the State of California, and established a new temporary or permanent residence or, if homeless, a new temporary or permanent location.

“3. The defendant had actual knowledge of his duty to register; and

“4. Having that knowledge, the defendant willfully failed to register as a sex offender . . . with the chief of the police of that city within 5 working days of coming into, or moving within, the city and establishing a new temporary or permanent residence. . . .”

The jury was also instructed with CALJIC Nos. 1.20 and 3.30. CALJIC No. 1.20 states: “The word ‘willfully’ when applied to the intent with which an act is done or omitted means with a purpose or willingness to commit the act or to make the omission in question. The word ‘willfully’ does not require any intent to violate the law. . . .”

CALJIC No. 3.30 states: “In the crime charged in Counts one and two, namely, failure to complete annual registration and failure to register within 5 days of change of address, there must exist a union or joint operation of act or conduct and general criminal intent. General criminal intent does not require an intent to violate the law. When a person intentionally does that which the law declares to be a crime, he is acting with general criminal intent, even though he may not know that his act or conduct is unlawful.”

Appellant argues that giving CALJIC Nos. 1.20 and 3.30 was error because it allowed the jury to conclude he could be guilty of violating section 290 even if he was unaware of the registration requirements. His argument relies primarily on *People v. Garcia* (2001) 25 Cal.4th 744 and *People v. Barker* (2004) 34 Cal.4th 345.

In *Garcia*, the defendant was charged with failing to register as a sex offender. He admitted he had never done so, but asserted he was unaware of the requirement, and no one had advised him of it. (*Garcia, supra*, 25 Cal.4th at p. 748.) As in the instant case, the *Garcia* jury was instructed with CALJIC No. 1.20. (*Garcia*, at p. 751.) It was also instructed with CALJIC No. 4.36, an “ignorance of the law” instruction comparable to CALJIC 3.30. (*Garcia*, at p. 751.)

Garcia held that although section 290 does not specifically refer to knowledge, the statute’s requirement that the defendant “willfully” failed to register (§ 290, subd. (g)(2)) requires proof that the defendant had actual knowledge of the duty to register. (*Garcia, supra*, 25 Cal.4th at pp 752-754.) Therefore, *Garcia* held that CALJIC No. 1.20, defining “willfully,” was incomplete because it did not clearly require proof of the defendant’s actual knowledge of his duty to register. It further held that an “ignorance of the law is no excuse” instruction which on its face would allow the jury to convict the defendant of failing to register even if he were unaware of his obligation to do so was error. (*Garcia*, at p. 754.)

Garcia ultimately concluded that the misleading instructions were not prejudicial. (*Garcia, supra*, 25 Cal.4th at p. 755.) Other instructions correctly required the jury to find that the defendant was informed by a prison official of his duty to register and to find

that the defendant had read and signed a required Department of Justice form that states the duty to register would be explained to the defendant. (*Ibid.*) It was undisputed that, immediately before he was released on parole, the defendant had signed and put a fingerprint on a “notice of registration requirement” which contained the statement that he had been notified of his duty to register and which gave specifics about the duty. Given this evidence and the properly given instructions, the guilty verdict necessarily demonstrated that the jury discredited the defendant’s claim that no one ever explained his duty to register and that he signed but did not read the “notice of registration requirement.” Therefore, *Garcia* concluded beyond a reasonable doubt that, had the jury been properly instructed on the “actual knowledge requirement,” it would have concluded the defendant was aware of his duty to register. (*Id.* at p. 755.)

Barker, supra, 34 Cal.4th at pages 360-361 subsequently affirmed *Garcia*’s basic holding that the jury must be instructed that violation of section 290 requires a finding that the defendant had actual knowledge of the registration requirements. *Barker* first held that the defendant’s claim that he “just [forgot]” to register does not negate the willfulness element of section 290.³ (*Barker*, at p. 361.)

Barker then concluded that giving CALJIC No. 1.20 and CALJIC No. 3.30 (the functional ignorance-of-the-law-is-no-excuse equivalent of CALJIC No. 4.36) was error because the two instructions failed to state clearly that conviction of section 290 requires actual knowledge of the registration requirements, and CALJIC No. 3.30 could mislead a jury to believe a defendant is guilty of violating section 290 even if unaware of his obligation to register. (*Barker, supra*, 34 Cal.4th at pp. 360-361.) Like *Garcia*, however, *Barker* concluded that any instructional error was harmless beyond a reasonable doubt, given the ample evidence that the defendant had been made aware of his registration obligation and its rejection of his I just forgot defense. (*Ibid.*)

The instant case differs from *Garcia* and *Barker* because the jury here was

³ *Barker* declined to determine whether forgetfulness that is the result of an organic limitation, such as an acute psychological condition or chronic memory or intelligence deficit, would be an acceptable defense. (*Barker, supra*, 34 Cal.4th at p. 358.)

specifically instructed that to prove appellant guilty of the two registration offenses, the People had to show that appellant had actual knowledge of his duties to register annually within five days of his birthday and within five days of coming into a city and establishing a new permanent residence. Thus, the requisite element of knowledge was not withdrawn from the jury.

Furthermore, any conflict between CALJIC Nos. 1.20 and 3.30, which imply a defendant can be guilty without actual knowledge of the duty to register, and the special instructions, which require proof of actual knowledge to find guilt, was harmless beyond a reasonable doubt. (*Garcia, supra*, 25 Cal.4th at p. 755.) There was strong evidence that appellant was on notice of his lifetime obligation to register annually in whatever California city he resided. In April 1997, a Daly City detective contacted appellant to inform and educate him in the statutory changes to the registration requirements. The detective reviewed each requirement with him, including lifetime registration, the annual birthday registration, and registering in a city to which he moved. Appellant initialed each requirement on the DOJ 8102 form that enumerates these requirements and signed the form in the detective's presence. He returned to the Daly City Police Department in late September 1997 on his own initiative, a few days before his October 2 birthday, because he knew of the requirement to register within a few days of one's birthday. On both occasions, as he acknowledged, he was given a card to carry in his wallet; the requirements are printed on that registration card. The registering detectives observed no language difficulty, nor did appellant's 1991-2000 employer, and appellant himself acknowledged that he could read and speak English.

The only controverted evidence was whether a Daly City front desk police officer misinformed appellant in June 1998 that his move to Pittsburg relieved him of any duty to register. Defense counsel was free to argue, as he did, that appellant reasonably relied on this misinformation and therefore stopped registering because he believed he no longer had a duty to do so, in effect arguing that the misinformation voided actual knowledge. Furthermore, the jury was twice instructed that a mistake of fact could

disprove the requisite intent of the offenses charged.⁴ In closing argument, defense counsel recited the two mistake of fact instructions and argued appellant was not guilty because he reasonably relied on a mistake of fact: the information from the front desk officer that he did not have to register again. The prosecutor reiterated that the jury would be instructed on the mistake of fact defense, adding: “That’s what this case really rests on [: appellant] says I was told this, I relied on it and, therefore, I don’t have the required mental elements of willfully failing to register.” The prosecutor then noted that the defense is applicable only if defendant’s belief in the mistake of fact is reasonable, and she reviewed all the evidence that demonstrated appellant’s reliance on this mistake of fact was not reasonable. In finding appellant guilty, the jury necessarily rejected the only evidence that supported his claim – his own testimony that he did not actually know of his continuing duties to register.

Under all these circumstances any instructional error was harmless beyond a reasonable doubt. (*Garcia, supra*, 25 Cal.4th at p. 755.)

II. Court’s Response to Jury Question

Appellant contends the court compounded the instructional error by failing to provide sufficient guidance to a jury inquiry regarding the instructions.

The jury submitted a request for “a clarification of what bering [*sic*] these documents have on our verdict.” The documents to which it referred were CALJIC Nos. 1.20, 3.30, 3.31.5, and 4.35, and defense special instruction “Mistake of Fact #2.”⁵

⁴ The jury was instructed with CALJIC No. 4.35: “An . . . omission made in ignorance or by reason of a mistake of fact which disproves any criminal intent is not a crime. [¶] Thus a person is not guilty of a crime if he . . . omits to act under an actual and reasonable belief in the existence of certain facts and circumstances which, if true, would make the act or omission lawful.”

It was also instructed with defense special instruction “Mistake of Fact #2”: “If you have a reasonable doubt as to whether a mistake of fact negated criminal intent you must find that such intent was not formed.”

⁵ CALJIC No. 3.31.5 states: “In the crime[s] charged . . . there must exist a union of joint operation of act or conduct and a certain mental state in the mind of the perpetrator. Unless this mental state exists the crime to which it relates is not committed. [¶] The mental states required are included in the definitions of the crimes set forth elsewhere in these instructions.”

Asked for a suggested response, defense counsel commented that the jury appeared to perceive these instructions governing “willfully” and requisite mental states as contradictory and proposed a brief argument distinguishing them. The prosecutor did not think the jury’s question sufficiently specific to warrant a specific response, and proposed as a response: “[T]hese are the jury instructions and give them the weight you think is appropriate given the arguments of both counsel.” She added that her “only concern is that willfully is a required element that I prove. General intent is a required element that I prove. Mistake of fact isn’t. I just don’t want to suggest that none may apply, because a couple [do].”

The court’s written answer to the jury’s inquiry stated: “These are jury instructions for your consideration. You may find that none apply, some apply, or all apply.” The jury asked no further questions and returned its verdict approximately 45 minutes later.

A court is required to help a jury understand the legal principles that it is asked to apply to the case. (*People v. Beardslee* (1991) 53 Cal.3d 68, 97.) “This [duty] does not mean the court must always elaborate on the standard instructions. Where the original instructions are themselves full and complete, the court has discretion under section 1138⁶ to determine what additional explanations are sufficient to satisfy the jury’s request for information. [Citation.]” (*Beardslee*, at p. 97.)

We find no abuse in the court’s response. The jury’s inquiry, reasonably construed, does not seek further elaboration of the individual instructions but rather seeks an explanation of the interplay of instructions that, admittedly, may appear difficult to reconcile. The court’s response correctly informed the jury that it was under no compunction to use every instruction but was to determine which instructions were applicable to the evidence presented. Insofar as the jury returned its verdict shortly

The other instructions are quoted, *ante*, at pages 10-11, and footnote 4.

⁶ Section 1138 provides, generally, that the jury may request information on any point of law arising in the case after it has retired to deliberate.

thereafter, without making any additional inquiries, it was impliedly satisfied with the response.

III. *Nature of Prior Conviction*

Appellant contends the court erred in denying his motion in limine to delete any mention of his status as sex offender to the jury.

Prior to jury selection, the court heard appellant's motion to sanitize his prior conviction of section 261 by which he sought an order that the People make no reference to that conviction in any of the exhibits they intended to offer into evidence or if they used the conviction for impeachment. Relying on Evidence Code section 352, appellant argued that categorizing him as a "sex offender" was unduly prejudicial when the only question for the jury was whether he had complied with the registration requirements. He offered to stipulate that he had a statutory duty to register and to stipulate to the requirements included in the registration statute, without any reference to the basis of his obligation. Alternatively, he offered to stipulate that he had a statutory duty to register because of "a felony conviction." The People agreed not to refer to the particular offense, but objected to deleting any reference to his "sex offender" status, insofar as one element they had to prove was his knowledge of the requirements specific to sex offenders. The court denied his motion to allow the People to prove their case, "which is that he has a prior conviction for a sexual offense and there are strict standards for registration based on that conviction." It agreed to sanitize the prior conviction by having it referred to only as a "sexual offense."

Relying on *People v. Valentine* (1986) 42 Cal.3d 170, 177, and its progeny, appellant argues that disclosure of the nature of his prior offense was irrelevant to the issue of failure to register and was thus prejudicial. In *Valentine*, the defendant was charged with possession of a concealable firearm by an ex-felon. (*Id.* at p. 176; § 12021.) He offered to stipulate to the prior conviction and asked the court to sanitize the current charge so the jury would not be informed of the fact of his prior conviction. The trial court refused, on the ground that full disclosure of the nature of the prior conviction is required by California Constitution, article I, section 28, which states: "When a prior

felony conviction is an element of any felony offense, it shall be proven to the trier of fact in open court.”

Valentine held that this constitutional provision requires the jury to be advised that the defendant is an ex-felon where such status is an element of the current charge. (*Valentine, supra*, 42 Cal.3d at p. 173.) However, if the defendant stipulates to being an ex-felon, evidence of the nature of his prior conviction should be withheld from the jury because such evidence is irrelevant to the ex-felon issue. (*Ibid.*; see also *People v. Stewart* (2004) 33 Cal.4th 425, 478.)

Here, appellant was not charged with an offense in which an element was simply “ex-felon” status. A critical element of section 290 is conviction of an enumerated sex offense; there can be no violation of this statute absent sex offender status. There is a strong policy against depriving the People’s case of its persuasiveness and strength by forcing the prosecutor to accept stipulations that soften the impact of the evidence in its entirety. (*People v. McClellan* (1969) 71 Cal.2d 793, 802.) Thus, prosecutors are not required to stipulate to the existence of any elements of the crime they are trying to prove where the stipulation will impair the effectiveness of their case and foreclose their options to obtain convictions under differing theories. (*People v. Robles* (1970) 2 Cal.3d 205, 213.) For example, in *Robles*, where the charge was assault with a deadly weapon by a person serving a life sentence (§ 4500), the prosecutor, who was required to prove that the defendant was a life prisoner, was not required to accept the defendant’s pretrial stipulation that he was serving a life sentence. (*Robles*, at pp. 212-213.)

The rule that the state cannot be restricted by stipulations in presenting its case is particularly compelling when the likely effect of a stipulation that removes certain matters from the trial is to hamper a coherent presentation of the remaining issues. (*McClellan, supra*, 71 Cal.2d at p. 802; *People v. Poon* (1981) 125 Cal.App.3d 55, 79.) In a charge of violating section 290, the People must prove the defendant knew he or she was obligated to comply with an extremely stringent set of requirements, including annual, life-long registration. If the jury is not informed why this defendant is subject to

such a seemingly onerous obligation, the People, as the instant prosecutor aptly observed, would “look overbearing.”

Justice Souter’s discussion in *Old Chief v. United States* (1997) 519 U.S. 172 of the general rule that entitles the prosecution to prove its case by its own evidence and precludes the defendant from stipulating his way out of the full evidentiary force of the case the prosecution chooses to present is germane. “[T]he ‘reason for the rule is to permit a party ‘to present to the jury a picture of the events relied upon. To substitute for such a picture a naked [stipulation] might have the effect to rob the evidence of much of its fair and legitimate weight.’” [¶] [T]his persuasive power of the concrete and particular is often essential to the capacity of jurors to satisfy the obligations that the law places on them. . . . When a juror’s duty [seems] hard, the evidentiary account of what a defendant has [] done can accomplish what no set of abstract statements ever could, not just to prove a fact but to establish its human significance, and so to implicate the law’s moral underpinnings and a jury’s obligation to sit in judgment. Thus, the prosecution may fairly seek to place its evidence before the jurors . . . to convince the jurors that a guilty verdict would be morally reasonable as much as to point to the discrete elements of a defendant’s legal fault. [¶] [There is also] the need for evidence in all its particularity to satisfy the jurors’ expectations about what proper proof should be. . . . ‘If [jurors’] expectations are not satisfied, triers of fact may penalize the party who disappoints them by drawing a negative inference against that party.’ [¶] People who hear a story interrupted by gaps of abstraction may be puzzled at the missing chapters, and jurors asked to rest a momentous decision on the story’s truth can feel put upon at being asked to take responsibility knowing that more could be said than they have heard.” (*Id.* at pp. 187-189.)

In the case of a violation of section 290, we agree that the jury need not be informed of the defendant’s specific sex offense conviction. However, unless the jurors are informed that the defendant’s duty to register derives from his status as a sex offender, they will be unaware of the public policy underlying the registration statute: assuring that persons convicted of sex offenses are readily available for police

surveillance at all times because the Legislature has deemed them likely to commit similar offenses in the future. (*Wright v. Superior Court* (1997) 15 Cal.4th 521, 527.) If the jury lacks a basis for the reason the state subjects certain people to registration requirements, there is the risk it will view the People's case as an oppressive, unnecessary intrusion on the defendant's liberty, resent the People for prosecuting it, and consequently refuse to consider whether the defendant's failure to register was sufficiently morally blameworthy to warrant punishment.

DISPOSITION

The judgment is affirmed.

Jones, P.J.

We concur:

Stevens, J.

Simons, J.

Trial court:

Contra Costa County Superior Court

Trial judge:

Hon. Theresa J. Canepa

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